

**76-5-109.1. Commission of domestic violence in the presence of a child.**

- (1) As used in this section:
  - (a) "Cohabitant" has the same meaning as defined in Section 78B-7-102.
  - (b) "Domestic violence" has the same meaning as in Section 77-36-1.
  - (c) "In the presence of a child" means:
    - (i) in the physical presence of a child; or
    - (ii) having knowledge that a child is present and may see or hear an act of domestic violence.
- (2) A person commits domestic violence in the presence of a child if the person:
  - (a) commits or attempts to commit criminal homicide, as defined in Section 76-5-201, against a cohabitant in the presence of a child; or
  - (b) intentionally causes serious bodily injury to a cohabitant or uses a dangerous weapon, as defined in Section 76-1-601, or other means or force likely to produce death or serious bodily injury against a cohabitant, in the presence of a child; or
  - (c) under circumstances not amounting to a violation of Subsection (2)(a) or (b), commits an act of domestic violence in the presence of a child.
- (3)
  - (a) A person who violates Subsection (2)(a) or (b) is guilty of a third degree felony.
  - (b) A person who violates Subsection (2)(c) is guilty of a class B misdemeanor.
- (4) A charge under this section is separate and distinct from, and is in addition to, a charge of domestic violence where the victim is the cohabitant. Either or both charges may be filed by the prosecutor.
- (5) A person who commits a violation of this section when more than one child is present is guilty of one offense of domestic violence in the presence of a child regarding each child present when the violation occurred.

Amended by Chapter 70, 2009 General Session